



March 1, 2002

Ms. Sarajane Milligan  
Assistant County Attorney  
County of Harris  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2002-1015

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159248.

The Harris County Department of Human Resources and Risk Management (the "county") received a written request for records in connection with a traffic accident involving a deputy sheriff. Specifically, the requestor seeks records reflecting "exactly what it was that Officer Soots was allegedly responding to" at the time of the accident. You contend that the requested information is excepted from disclosure under sections 552.103 and 552.130 of the Government Code.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Although you submitted to this office records regarding the traffic accident, you did not submit to this office records reflecting "exactly what it was that Officer Soots was allegedly responding to" at the time of the accident.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because you have not submitted to this office the information specifically requested, we have no

choice but to order this information released pursuant to section 552.302, to the extent it exists. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

Although it is not apparent to this office that the records you submitted to this office are responsive to the request, we will nevertheless address the extent to which the submitted records come under the protection of the exceptions you raised. We note at the outset, however, that you submitted to our office an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). The release of this accident report is governed by chapter 550 of the Transportation Code. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the county with the three pieces of information. Consequently, the county must release the accident report pursuant to section 550.065 of the Transportation Code.

We next note that some of the submitted records are specifically made public under section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

....

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Among the submitted documents are a completed Harris County Accident Report made public under section 552.022(a)(1)<sup>1</sup> and two estimates of repairs for the damaged sheriff vehicle made public under section 552.022(a)(5). Therefore, the county may withhold those records only if they are made confidential under other law. Although you argue that the records are excepted under section 552.103 of the Government Code, this provision is a discretionary exception and therefore is not "other law" for purposes of section 552.022. *See, e.g.,* Open Records Decision Nos. 665 at 2 n.5 (2000) (governmental body may waive section 552.103).

However, because section 552.130 is a mandatory exception, we will consider the applicability of exception to the records made public under section 552.022. Section 552.130(a)(1) of the Government Code requires the county to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the county must withhold the Texas driver's license numbers and Texas license plate and VIN numbers that we have marked contained in the records made public under section 552.022.<sup>2</sup>

We now address the applicability of section 552.103 to the remaining records at issue. Section 552.103 is commonly referred to as the "litigation exception." Under section 552.103(a) and (c), the governmental body raising this exception must demonstrate that (1) litigation involving the governmental body was pending or reasonably anticipated at the time of the records request, and (2) the information at issue is related to that litigation. *See also University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103.

In Open Records Decision No. 638 (1996), this office determined how a governmental body must establish reasonably anticipated litigation when relying solely on a claim letter. We stated that the governmental body must 1) show that it has received a claim letter from an allegedly injured party or his attorney and 2) state that the letter complies with the notice of claim provisions of the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code, or applicable municipal statute or ordinance. Because you represent that the notices of claim received by the county "meet the requirements to serve as notice to Harris County under the Texas Tort Claims Act," we conclude that you have met your burden of establishing that civil litigation against the county was reasonably anticipated on

---

<sup>1</sup>We note that you did not raise section 552.108 for this document.

<sup>2</sup>We note that the requestor has a special right of access to his client's driver's license and license plate numbers pursuant to section 552.023 of the Government Code.

the day the county received the current records request. Furthermore, after reviewing the information at issue, we conclude that the records not subject to section 552.022, discussed above, "relate" to the anticipated litigation for purposes of section 552.103 of the Government Code. Accordingly, the county may withhold the remaining submitted information pursuant to section 552.103, with the following exceptions.

We note that some of the documents you submitted to this office have been previously viewed by the opposing party in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103 interest exists with respect to that information.<sup>3</sup> Open Records Decision Nos. 349 (1982), 320 (1982). We have placed red flags on the documents the county may not withhold pursuant to section 552.103. Because you have raised no other applicable exception to disclosure, the county must release these documents to the requestor.

In summary, the county must release to the requestor all of the records reflecting "exactly what it was that Officer Soots was allegedly responding to" at the time of the accident. The county must also release the submitted Texas Peace Officer's Accident Report, the Harris County Accident Report, and the two estimates of repairs for the damaged sheriff vehicle, which are made public under section 552.022(a), except to the extent those records contain Texas driver's license numbers and Texas license plate and VIN numbers that must be withheld under section 552.130. With these exceptions, the submitted records may be withheld pursuant to section 552.103, except for those documents to which the requestor has had prior access.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

---

<sup>3</sup>We also note that the applicability of section 552.103 ends once the likelihood of litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/RWP/sdk

Ref: ID# 159248

Enc: Submitted documents

c:     **Mr. Kelley Friedman**  
          **Johanson & Fairless**  
          **1456 First Colony Boulevard**  
          **Sugar Land, Texas 77479**  
          **(w/o enclosures)**